



## REGION 1 ADMINISTRATOR

BOSTON, MA 02109

January 17, 2025

Julie Moore  
Secretary  
Vermont Agency of Natural Resources  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3901

RE: Joint Petition from the Conservation Law Foundation,  
Vermont Natural Resources Council, and Lake Champlain Committee;  
Corrective Action Plan Submitted December 9, 2024

Dear Secretary Moore,

On December 9, 2024, EPA Region 1 received a Corrective Action Plan ("Plan") submitted by the State of Vermont in response to EPA's September 6, 2024, letter in which we identified seven major and longstanding deficiencies in Vermont's regulation of Concentrated Animal Feeding Operations under the Clean Water Act's National Pollutant Discharge Elimination Program (NPDES). EPA appreciates the tremendous amount of work and internal coordination among state agencies that has gone into formulating the Plan, as well as Vermont's close collaboration with Region 1 technical and legal staff over the past year and half. The Plan represents not only an acknowledgement of program deficiencies, but also a positive step forward toward ANR meeting its obligations as the agency authorized by EPA to administer the NPDES program in Vermont.

As you recall, EPA requested that Vermont comprehensively address each of the seven deficiencies in its Plan, and for any remedy requiring an extended timeframe to implement, we requested clear, measurable commitments and milestones along the path to completion. As you are aware, Vermont has been on notice of and has acknowledged serious, facial deficiencies in its CAFO program for more than a decade.

To summarize, the seven requirements that EPA requested for the corrective action plan are:

- 1) ANR personnel must inspect all potentially jurisdictional farms to determine if a CAFO permit is required;

- 2) ANR personnel must review nutrient management plans and issue CAFO permits consistent with federal requirements;
- 3) ANR must comprehensively track permitting, monitoring, and enforcement actions;
- 4) ANR must enforce against farms that are discharging without a permit;
- 5) ANR must have sufficient personnel to fully implement the foregoing requirements in a timely manner;
- 6) ANR must seek the necessary statutory and regulatory authority to fully implement the CWA requirements; and,
- 7) ANR must include a reasonable but expeditious timeline, including a date certain for the completion of the correction action plan.

Again, EPA appreciates the effort that went into crafting the Plan, which will serve as a productive starting point on the path toward fully addressing these seven requirements with sufficient detail so that EPA can be assured that it will lead to full compliance with the Clean Water Act. After reviewing this initial submission, EPA does have several questions and concerns. We hope the issues identified below will help Vermont in its efforts to bring the program into compliance with the Clean Water Act:

- First, an acceptable corrective action plan must clearly identify ANR as the sole state agency authorized to administer the NPDES permitting program in Vermont and the only state authority authorized to enforce Clean Water Act requirements, generally, and specifically with respect to CAFOs. We appreciate the important role of the Agency of Agriculture, Food, and Markets (AAFM) in supporting Vermont's agricultural sector. EPA would strongly caution against relying on AAFM to draw the distinction between discharging and non-discharging farms for the purposes of establishing jurisdiction under the Clean Water Act. ANR is the only state entity authorized to administer the NPDES program and as such is the only entity authorized to determine, for Clean Water Act purposes, whether a discharge to a surface water has or is occurring, or whether a discharge has been fully remedied; this jurisdictional determination, in other words, is not within the purview of AAFM. In the history of NPDES regulation in Vermont, the divide between ANR and AAFM has led to confusion and regulatory inaction.
- Second, EPA would urge ANR to take all actions necessary to identify farms with discharges and to seek efficient ways to do so with limited resources. While EPA appreciates the efforts many farms have made to address these issues, it is imperative for the proper functioning of a CAFO program for the agency to identify those farms requiring permitting and potential enforcement action. At a minimum, please consider taking the following steps:
  - Issue a CAFO General Permit that covers farms of all sizes—small, medium and large—and at a minimum, require large CAFOs with evidence of a discharge to obtain coverage under it. This would significantly reduce the pressure on the state's limited permitting and enforcement resources in the short-term and long-

term. We could provide information from other states that have successfully implemented this permitting approach if you are interested. Region 1's Office of Regional Counsel and Water Division also have significant experience drafting and issuing general and individual permits, and the Region will make this expertise available to Vermont.

- Designate farms needing a CAFO permit based on: (1) any existing records, data and other relevant, reliable information that shows previous or ongoing discharges to a ditch, wetland, or other surface water, and (2) farms that have previously applied for the state's winter spreading policy, which indicates that the farm does not have adequate storage capacity for its process wastewater. After this assessment is completed, ANR would send a letter to the facility requesting a permit application for CAFO permit coverage.
- Identify a list of farms in close proximity to water quality impacted surface waters and calculate wastewater storage capacity using modeling and precipitation data to determine the frequency of discharges that have occurred in the past and will likely occur in the future. This exercise will provide probative information indicating the facility needs CAFO permit coverage.
- When inspecting or otherwise investigating facilities that discharge into impacted surface waters, conduct attendant water quality sampling during wet weather to determine the extent of the water quality impacts.

As mentioned in our previous letters, EPA is available to assist the state with training and technical assistance. EPA laboratory services are also available to assist with sampling.

- Third, EPA is concerned that the proposed staffing levels are not sufficient to complete the tasks required. We look forward to engaging with you on this.
- Fourth, the Corrective Action Plan, Section A) 1. includes the statement, "ANR will determine if the farm needs a NPDES CAFO permit." EPA concurs with this general statement, but it is by itself insufficient. The Plan will need to explain in detail how ANR will fulfill EPA's corrective action plan requirements 1) and 2) above.
- Fifth, the Corrective Action Plan, Section A) 2. includes the statement, "ANR will regulate all discharging farms that require a federal NPDES CAFO permit." The Plan should clarify that ANR will regulate all farms subject to CWA jurisdiction (farms that meet the federal regulatory definition for Animal Feeding Operations) and should not only regulate farms that are discharging and require an NPDES permit.
- Sixth, the Corrective Action Plan, Section A) 4. includes the statement, "AAFM will continue to regulate all farms that don't need a CAFO permit." The Plan should be clarified so that it conforms with EPA's corrective action plan requirement 4) above and clarify that AAFM does not have authority to regulate farms pursuant to any authority under the CWA.
- Seventh, the Corrective Action Plan, Section B) includes the statement, "AAFM and ANR will share data management systems and resources to increase and improve information

sharing on inspection, permitting, monitoring, and enforcement activities.” The Plan should be expanded to fully reflect EPA’s corrective action plan requirement 3) above. For example, the Plan should explain in detail how ANR will comprehensively track, monitor, and implement enforcement actions.

- Eighth, the Corrective Action Plan, Section C) includes the statement, “ANR and AAFM will jointly inspect medium and large farms.” Under the Clean Water Act, ANR is the state permitting and enforcement authority for all farms, and we look forward to discussing how ANR will meet this obligation for farms of all sizes.
- Ninth, the Corrective Action Plan, Section C) includes the statement, “ANR will review all NMPs prior to inspections and determine if the NMPs are sufficient and being followed.” The Plan should clarify that state NMP regulations must be at least as stringent as corresponding federal regulations.
- Tenth, the Corrective Action Plan, Section D) includes the statement, “ANR will develop and adopt an updated Vermont CAFO Rule.” The Plan should be clarified to state that Vermont’s CAFO Rule will reflect all applicable federal CWA NPDES regulations.
- Eleventh, the Corrective Action Plan, Section F) includes the statement, “ANR will commit to annual reporting and tracking of Key Performance Indicators.” The Plan needs to identify relevant interim milestones and deadlines for completion in order to fully address EPA’s corrective action plan requirement 7) above. For example, ANR will need to add specific key indicators (milestones) it will accomplish and will need to commit to reporting to EPA at agreed upon intervals with specific accomplishments.

EPA continues to strongly believe that a prompt resolution of the points above is in the best interest of all parties. As a next step, EPA is requesting additional information to supplement the proposed Corrective Action Plan that addresses the concerns outlined above in greater detail, on or before March 18, 2025. We encourage the agency to review the workplan attached to our November 4, 2024, letter that was developed by the State of Illinois in response to a program withdrawal petition that can serve as example of EPA’s expectations. The State of Illinois’ workplan includes the level of detail with specific milestones and deadlines that EPA requires from ANR.

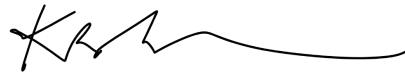
Further, we recognize portions of the Plan will require legislative and regulatory action in order to be implemented. Attachment A of the Plan mentions some regulatory and statutory changes that the state will be pursuing; however, because Plan implementation will hinge on legislative action, EPA will need to comprehensively evaluate draft legislation and proposed implementing regulations related to the Plan prior to approving it. EPA requests that you keep us fully apprised of legislative activity and provide draft statutory and regulatory language for EPA’s review when this material becomes available. EPA does not intend to take any action with respect to the Plan (either approving or disapproving) until we have had the opportunity to review proposed implementing legislation and regulations.

As the State makes progress on necessary legislative and regulatory changes, there are some actions identified in the submitted Plan that the agency can take immediate action on, including obtaining contractor support for conducting inspections and hiring new staff to support the CAFO program needs. Such action will continue the progress toward addressing achieving a CAFO program that is fully compliant with the Clean Water Act.

EPA will continue to assess progress and looks forward to reviewing the supplemental materials requested above. As always, EPA stands ready to provide any technical guidance or support Vermont may require in the coming months.

Should you have any questions regarding this letter, please contact Thelma Murphy at [murphy.thelma@epa.gov](mailto:murphy.thelma@epa.gov) or (617) 918-1615.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Moraff', with a long horizontal flourish extending to the right.

Ken Moraff  
Director, Water Division  
EPA Region 1

cc: Elena Mihaly, Vice President and Director, CLF  
Lauren Hierl, Executive Director, VNRC  
Jenny Peterson, Executive Director, LCC  
Anson Tebbetts, Secretary, AAFM  
Steven Collier, General Counsel, AAFM  
Catherine Gjessing, General Counsel, ANR  
Pete LaFlamme, Director, DEC Watershed Management Division